



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 8418892

Date: JULY 21, 2020

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, a computer engineering researcher, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner qualified for classification as a member of the professions holding an advanced degree, but that he had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional documentation and a brief asserting that he is eligible for a national interest waiver.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –

(A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

(i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien’s services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term “national interest,” we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).¹ *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion², grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national’s proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor’s merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual’s education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national’s qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming

¹ In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm’r 1998) (*NYSDOT*).

² See also *Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS’ decision to grant or deny a national interest waiver to be discretionary in nature).

that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.³

II. ANALYSIS

The Director found that the Petitioner qualifies as a member of the professions holding an advanced degree.⁴ The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as a senior research assistant in the [redacted] of Electrical and Computer Engineering at [redacted] University [redacted]. In July 2019, he began serving as an assistant professor in the Department of Technology at [redacted] University.⁵

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicated that he intends to continue his research involving “computer science and engineering, and, specifically, in the area of [redacted] memory, [redacted] systems, and [redacted] characterization and performance evaluation of next generation processors and high-performance computing.” The record supports the Director's determination that the Petitioner's proposed endeavor has substantial merit and national importance. For example, he presented a strategic plan from the U.S. National Strategic Computing Initiative Executive Council discussing our country's objectives to sustain and enhance U.S. leadership in high-performance computing. In addition, the Petitioner provided documentation indicating that the benefit of his proposed research has broader implications, as the results are disseminated to others in the field through engineering journals and conferences. As the Petitioner has documented both the substantial merit and national importance of his proposed computer engineering research, we agree with the Director's determination that he meets the first prong of the *Dhanasar* framework.

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his curriculum vitae, academic credentials, published articles, conference presentations, and peer review activities. He also offered evidence of articles that cited to his published work, and letters of support discussing his past research projects.

The Petitioner contends on appeal that his “experience on [redacted] and [redacted] simulator and [redacted],” the reputation of the conferences in which he has participated, the stature of the

³ See *Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

⁴ The Petitioner received a Ph.D. in Engineering from [redacted] University in December 2016.

⁵ As the Petitioner is applying for a waiver of the job offer requirement, it is not necessary for him to have a job offer from a specific employer. However, we will consider information about his positions to illustrate the capacity in which he intends to work in order to determine whether his proposed endeavor meets the requirements of the *Dhanasar* analytical framework.

computer engineers who conceived his graduate research topics, the accomplishments of his references and coauthors, and the citation history of his work demonstrate that he is well positioned to advance his proposed endeavor. For the reasons discussed below, the record supports the Director's determination that the evidence is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed research under *Dhanasar*'s second prong.

In letters supporting the petition, several references discussed the Petitioner's computer engineering research projects at [REDACTED].⁶ For example, [REDACTED], a principal member of the technical staff at [REDACTED],⁷ indicated that the Petitioner "performed extensive research on an [REDACTED] memory and proposed hardware software controlled [REDACTED] memory. His preliminary research on cache shows that for high-performance computing [REDACTED], cache line utilization is around 50%, illustrating the inefficiency of current fixed size cache lines for scientific applications." [REDACTED] further stated that the Petitioner proposed "to generate a [REDACTED] block configurable by the programmer or compiler, that will be utilized 100%" and "to generate the blocks with combining same type variables [REDACTED]," but the Petitioner has not shown that this work has been implemented, utilized, or applauded by others in the field.

Furthermore, [REDACTED] professor at [REDACTED] University, asserted that the Petitioner devised "an [REDACTED] memory architecture [REDACTED] that consumes less power compared to conventional cache architecture. Additionally, his proposed design is flexible compared to conventional [REDACTED] memory that is currently used in embedded systems." While [REDACTED] contended that the Petitioner's [REDACTED] memory can be used in future mobile devices as well as biomedical equipment," he does not offer specific examples of how the Petitioner's design has generated positive interest among relevant parties, has been utilized by mobile device or biomedical equipment manufacturers, or otherwise reflects a record of success in his area of research.

In addition, [REDACTED] platform performance architect at [REDACTED] stated that the Petitioner "has shown the performance of [REDACTED] cache architecture for different [REDACTED]" and that "[t]his performance evaluation would be helpful for application characterization (identify the similarity) and writing program codes (identify the critical section)." Likewise, [REDACTED], a senior software engineer at [REDACTED] noted that the Petitioner "has characterized [REDACTED]s from [REDACTED] and [REDACTED] suites. . . . In this work, he identified the number of required hardware execution units for the tests in the aforementioned [REDACTED] suites. This data is incredibly useful for optimizing the [REDACTED] and the important applications they model." [REDACTED] and [REDACTED] however, do not explain how the Petitioner's [REDACTED] optimization work has affected the industry or otherwise constitutes a record of success in his field.

As it relates to the citation of the Petitioner's work, he provided information from Google Scholar indicating that his four highest cited articles in *IEEE 35th International Performance Computing and Communications Conference* (2016), *International Conference on Computational Science and Computational Intelligence* (2016), *5th International Workshop on Performance Modeling, Benchmarking and Simulation of High Performance Computer Systems* (2014), and *International*

⁶ While we discuss a sampling of these letters, we have reviewed and considered each one.

⁷ [REDACTED] was previously an associate professor at [REDACTED] and served as the Petitioner's primary advisor during his Ph.D. research.

Conference on Informatics, Electronics & Vision (2012) each received 6, 5, 5, and 2 citations, respectively. The Petitioner does not, however, offer comparative statistics showing the significance of this level of citation within his field.

With respect to the documentation reflecting that the Petitioner has presented his findings at engineering conferences, we note that many professional fields regularly hold meetings and conferences to present new work, discuss new findings, and network with other professionals. Although presentation of the Petitioner's work demonstrates that he shared his original findings with others, he has not demonstrated that the number of citations received by his articles reflects a level of interest in his work from relevant parties sufficient to meet *Dhanasar*'s second prong. Moreover, that a publication or conference bears a high ranking or impact factor is reflective of the publication's overall citation rate. It does not, however, show the influence of any particular author or otherwise demonstrate how an individual's research represents a record of success in his field.

Regarding his peer review activities, the Petitioner provided evidence indicating that he reviewed articles for ITC 2017, ScalCom 2017, FIE 2017, and IEEE-GCC 2017. The Petitioner, however, has not documented the stature of these conferences or offered other documentation demonstrating that his peer review experience rises to the level of rendering him well positioned to advance his proposed [redacted] research. Nor does the record show that the Petitioner's occasional participation in the widespread peer review process represents a record of success in his field or that it is otherwise an indication that he is well positioned to advance his research endeavor.

The evidence indicates that the Petitioner has conducted, published, and presented research while working at [redacted] but he has not shown that this work renders him well positioned to advance his proposed research. While we recognize that research must add information to the pool of knowledge in some way in order to be accepted for publication, presentation, funding, or academic credit, not every individual who has performed original research will be found to be well positioned to advance his proposed endeavor. Rather, we examine the factors set forth in *Dhanasar* to determine whether, for instance, the individual's progress towards achieving the goals of the proposed research, record of success in similar efforts, or generation of interest among relevant parties supports such a finding. *Id.* at 890. The Petitioner, however, has not shown that his published and presented work has served as an impetus for progress in the computer engineering field or that it has generated substantial positive discourse in the engineering community. Nor does the evidence otherwise demonstrate that his work constitutes a record of success or progress in researching [redacted] memory and [redacted] optimization. As the record is insufficient to show that the Petitioner is well positioned to advance his proposed research endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his research experience and accomplishments, the importance of his field, and the impracticality of labor certification. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national

interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite second prong of the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.